



COMPETITION COMMISSION OF PAKISTAN GOVERNMENT OF PAKISTAN

POLICY NOTE

REFORM OF PRICE DETERMINATION PRACTICE FOR FRESH MILK PRESENTLY IN USE BY LOCAL AUTHORITIES

The Competition Commission of Pakistan (the ‘CCP’) has been established *inter alia* to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior. Relevant portions of Sections 28 and 29 of the Competition Act, 2010 (the “Act”) state:

“28. **Functions and powers of the Commission.** – (1) *The functions and powers of the Commission shall be –*

...

- e. to engage in competition advocacy; and*
- f. to take all other actions as may be necessary for carrying out the purposes of this Act.*

...

29. **Competition Advocacy.** – *The Commission shall promote competition through advocacy which, among others, shall include –*

...

- b. reviewing policy frameworks for fostering competition...”*

2. It is the CCP’s mandate to promote competition through advocacy and persuade economic agents including government agencies and regulators to act in accordance with the Act. The CCP holds the view that the current practice of price determination of fresh milk is inconsistent with the overall spirit of Chapter II of the Act. Through this Policy Note, the CCP desires to correct the practice of price determination.

3. The CCP took cognizance of various news items reporting that the local authorities were setting the price of fresh milk after consulting dairy farmers associations (*Pakistan Today*, 16 February 2011; *Express Tribune*, 1 March 2011; *Samaa TV*, 8 March 2011). More recent instances are *Pakistan Observer*, 01 January 2012, and *Daily Times*, 12 March 2012. While the news items relate to price fixation and consultation in Sindh and particularly Karachi, the CCP has gathered relevant information from all provincial governments and the Islamabad Capital Territory (“ICT”) administration, to discern the prevalent practice for setting prices of fresh milk.

Relevant legal framework: Federal

4. The prices of essential commodities are regulated through the provisions of the Price Control and Prevention of Profiteering and Hoarding Act, 1977 (hereinafter referred to as the 'PC Act'). The relevant sections of the PC Act that empower the Federal Government to undertake such regulation and specify the manner in which such prices need to be controlled are:

“3. Powers to make orders, etc. — (1) The Federal Government, so far as it appears to it to be necessary or expedient for securing equitable distribution of an essential commodity and its availability at fair prices, may, by notified order, provide for regulating the prices, production, movement, transport, supply, distribution, disposal and sale of the essential commodity and for the price to be charged or paid for it at any stage of transaction therein. (Emphasis added)

...

(2) Without prejudice to the generality of the powers conferred by subsection (1), an order made thereunder may provide-

...

(a) for controlling the prices at which any essential commodity may be bought or sold in any area; (emphasis added)

...

(i) for requiring every importer, producer and dealer to mark the essential commodities with the sale prices and to exhibit on his premises a price list of the essential commodities held by him for sale;

...

6. Fixation of prices.— (1) Subject to such general or special orders as may be made by the Federal Government under section 3, the Controller General may, by notification in the official Gazette, fix specific maximum prices of essential commodities and different prices may be fixed for different localities or for different classes or categories of any essential commodities.

(2) No person shall sell or re-sell any essential commodity at a price higher than the maximum price so fixed.

(2A) Every Dealer, importer or producer of an essential commodity the maximum price of which is not for the time being fixed by a notification issued under sub section (1) shall, if so required by the Controller General by an order in writing or by a notified order, inform the Controller General by notice in writing forwarded to him by registered post acknowledgment due to his intention to raise the price of the essential commodity and shall not raise the price-

(a) Before the expiration of 30 days from the day on which the notice is received by the Controller General; or

(b) At any time thereafter, if, within the said period, the Controller General communicates to him an objection to the price being raised. (emphasis added)

(2B) A notice under sub section (2A) shall specify the amount by which the price of the essential commodity is proposed to be raised and the reasons therefore shall be accompanied by the latest annual audited accounts of the dealers, importers or producer.”

5. Under the provisions of the PC Act, the powers to control and regulate the prices of essential commodities can be delegated. The relevant provision providing for the delegation of powers under the PC Act is:

“4. Delegation of powers.— The Federal Government may, by notified order direct that any power conferred on it by or under this Act shall in relation to such matters and subject to such conditions, if any, as may be specified in there direction, be exercisable also by-

(a) such officer or authority subordinate to the Federal Government, or

(b) such Provincial Government or such officer or authority subordinate to a Provincial Government as may be specified in the direction.”

Government of Pakistan, Ministry of Industries, Production and Special Initiatives has notified all the Secretary Industries Department, Directors of Industries, and DCOs as Controller General of Prices in their respective Provinces for regulation of prices of 25 essential commodities of the schedule of the Act vide Notification No. 1/(7)/2005-CA Vol-III dated 14-09-2006.

Current practice for setting prices in Islamabad

6. In the case of Islamabad, as per Ministry of Interior’s Notification No.5/80/2006-ICT-II dated 27th May 2006, the following officers of the ICT Administration, i.e. Chief Commissioner, Deputy Commissioner and Assistant Commissioner have been appointed as Controller General, Deputy Controller General and Assistant Controller General of Prices and Supplies in the ICT, respectively.

The prices are determined and controlled by the District Price Control Committee (DPCC). The DPCC is a monitoring/advisory body that forwards its recommendations to the district administration for fixing prices. These prices are notified by the Deputy Commissioner/ District Magistrate. There are periodical meetings of the Committee, fortnightly or as the case may be, as desired by the Chairman. The price control committees of different areas, markets and localities meet regularly, review the prices, and send their recommendations to the DPCC or the Deputy Commissioner. In addition to the meetings of the price control committees, meetings are also convened by the Deputy Commissioner with stakeholders i.e. prominent citizens, consumers, retailers, wholesalers, manufacturers, media persons, members of bar association. After detailed deliberations, the prices are fixed with the consent of all stakeholders. Through market surveys, officers involved in price control ascertain prices of commodities that are to be fixed in an upcoming meeting. After collecting price information, the negotiations between government’s price control staff and the respective stakeholders take place, and a price is agreed upon. The price of fresh/ loose milk can also be fixed by the District Magistrate in consultation with all the stakeholders. Presently, there is no registered association of milk sellers in Islamabad.

Current practice for setting prices in different provinces

7. In the matter of fixing and controlling prices of fresh milk, the CCP gathered the following information from provincial governments:

- a. In Balochistan, the Price Control and Prevention of Profiteering and Anti-Hoarding Act, 1977, regulates the prices of essential commodities. Secretary and Director of Industries, and District Coordination Officers (DCOs) have been notified to act as controller general of prices and supplies. After the promulgation of Balochistan Local Government Act 2010, the concerned deputy commissioner assumed the charge as chairman of the Price Control Committee.¹ He constitutes various advisory sub-committees assigned with the task of scrutinizing input cost, storage and freight charges, preservation and supply to the market. Based on the deliberations of advisory committees, he recommends proposals at the meeting of the Price Control Committee. As per practice in the districts, the representative of the Dairy Farms Association is also a member of the Price Control Committee.
- b. In Gilgit Baltistan, Assistant Commissioner/ Sub Divisional Magistrate is the chairman of Price Control Committee of the respective sub-division.² Prices are fixed and controlled by Assistant Commissioner/Sub-Divisional Magistrates and Executive Magistrates (Tehsildar/Naib Tehsildar). To control and fix the prices of commodities of daily use, they summon meetings with shopkeepers/ shops-owners on a regular basis, and fix the prices according to inflation.
- c. In the case of Khyber Pakhtunkhwa, two legislations are relevant - the Food Stuff Control Order and the Price Control Act, 1977. The prices of essential commodities are fixed under the 'Khyber Pakhtunkhwa Food Stuff Control Order, 1975' that was framed under 'The West Pakistan Food Stuff (Control) Act, 1958'. Under this Act, the District Coordination Officers (DCOs) chair the Price Review Committees to fix the prices of essential commodities. The prices of milk are fixed in consultation with the respective District Food Controller along with representatives of Livestock Department and traders' community on a monthly/ bi-monthly basis.
- d. The Secretary Industries Department, and Director Industries, Government of Khyber Pakhtunkhwa have been delegated the power of Controller General of Prices for 25 essential commodities of the schedule of the Price Control and Prevention of Profiteering and Hoarding Act, 1977. The Director Industries and Commerce, Khyber Pakhtunkhwa further

¹ Balochistan Local Government Act, 2010 Section 153 transfers administrative and financial powers from the district level to the provincial level. Vide notification No. SORI-3(9)/S&CAD/2010/1104-1203 dated 29th July 2010, the nomenclature of the post of District Coordination Officer has been substituted by that of Deputy Commissioner. Thus, the functions assigned to the DCOs are now being carried out by the respective Deputy Commissioners.

² Powers under Section 260 of the Criminal Procedure Code (CPC) are delegated to Assistant Commissioner/ Sub Divisional Magistrates and Executive Magistrates (Tehsildars/ Naib Tehsildars) by the provincial government. It is added that as per Article 1 of the Constitution of Islamic Republic of Pakistan, 1973, Gilgit Baltistan is not a part of Pakistan. However, in terms of the Gilgit-Baltistan (Empowerment and Self-Governance) Order, 2009 (the 'Governance Order') the Governor of Gilgit Baltistan is appointed by the President of Pakistan and in terms of the Article 31(2) of the Governance Order, the executive authority of the Gilgit Baltistan Government shall be so exercised as to secure compliance with the laws made by the Council and with Pakistan laws. However, any notification regarding adoption of the Price Control Act was not made available to the CCP.

delegated the power of Controller General of Prices to field officers, i.e. Industrial Development Officer of the Directorate of Industries and Commerce, Khyber Pakhtunkhwa for monitoring and regulating the prices fixed by the Price Review Committee of the district concerned (notification No. AD(1)/3/11/IND dated 08/09/2010). The DCOs have also been delegated the power of Controller General of Prices for 25 essential Commodities under the Price Control and Prevention of Profiteering and Hoarding Act 1977, which are also covered under the “Khyber Pakhtunkhwa Food Stuff Control Order 1975” framed under “The West Pakistan Food Stuff (Control) Act, 1958.

- e. In Punjab, the legislative instrument through which the provincial and district governments control and fix prices of essential commodities is the Price Control and Prevention of Profiteering and Hoarding Act, 1977. The Federal Government notified the following officers as controller general of prices and supplies:
 - i. Secretary and Director, Industries Department – provincial level
 - ii. All District Coordination Officers – district level
 - f. The DCOs notify the District Price Control Committees (DPCCs) comprising all stakeholders including traders, wholesalers, retailers and consumer associations. These committees review the prices of essential items on a regular basis and re-fix the prices by consulting all stakeholders; they also consider prices in the adjoining districts. According to the SOPs for District Price Control Committee (DPCC) meetings, the nominees of the Milk Association act as ‘non-official members’. After reviewing supply, demand and production cost, these committees fix prices of essential commodities on a fortnightly basis. The prices are fixed in consultation with the stakeholders.
 - g. In Sindh, the district coordination officers/ deputy commissioners are notified as District Controller of Prices and Supplies under Price Control and Prevention of Profiteering and Hoarding Act, 1977 as well as the Sindh Essential Commodities Price Control and Prevention of Profiteering and Hoarding Act, 2005 (vide Notification No. SOA/(LG)(36)/2005 (ii), dated 08-10-2005). Prior to fixing prices of essential commodities, all the markets are surveyed and prices are recorded by the technical staff. All the Consumer Associations, Traders Associations, Producers and Millers are advised to provide wholesale prices of the commodities. Then meetings with stakeholders i.e. consumers, traders, producers, whole-sellers, retailers and millers are convened by each DCO for discussing and fixing the wholesale and retail prices of all essential items including milk. After detailed deliberations, the prices are fixed with the consent of all the stakeholders.
8. It appears that the officers involved in the price control work survey different wholesale and retail markets to ascertain prices of commodities, such as milk in the present case, that have to be fixed in an upcoming meeting. Once information on milk prices has been collected, negotiations between members of the Price Control

Committee/government's price control staff and the respective stakeholders including associations take place and a price is agreed upon.

The Commission's concerns

9. This Commission notes that any formal or informal trade association or producers' representative body is generally formed to protect the interest of its members. Such trade associations serve useful economic purposes by providing a forum to keep members informed of industry developments, thus enabling them to take more informed business decisions. In the fixing of milk prices, primarily two issues are involved: firstly, consultation among members with their respective association to reach a common agreed price, and secondly, designating their association to negotiate with Price Control Committees to approve/consider their bench mark price – in fact by doing so the association becomes a forum for price-fixing. This practice is against the letter and spirit of the Competition Act, 2010. This Commission is of the view that entering into negotiation/agreement/arrangement to reach an accord to reconcile prices of their produce is beyond the role of an association and this may have negative repercussions for competition in the relevant market.

10. The Commission understands that in its efforts to determine the conditions of the market, and related costs, the Price Control Committees may solicit information from parties operating in the market. However, this can only be a *one-way information flow*. Based on this information, *and its own considerations and analysis*, the local government is supposed to determine the price of essential commodities. Contrary to this, the local governments have often been found to be engaged in a process of negotiation and consultation to determine the price of fresh milk.

11. The Commission notes that the efforts of the provincial government's Price Control Committees/department to negotiate with associations may be driven by a desire to keep prices low, but this intent does not legitimise the practice. The fixing of prices, even if intended to reduce prices, interferes with the competitive dynamics of the market that must be allowed to work to determine the best price for all stakeholders. It is possible that a freely functioning market may result in even lower prices than the "low prices" that are fixed. Efforts to ease the economic burden on citizens must find other avenues, and must not utilize methods that are violative of the provisions of the Act. The practice of discussions with the associations of retailers is against the letter and spirit of the competition law that eventually results in 'fixing the sale price' by retailers, suppliers and other market players, which is not permitted:

Reference in this regard has to be made to Section 4 of the Act, that prohibits any *"undertaking or association of undertakings to enter into any agreement, or in the case of an association of undertakings to make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market."* In particular, Section 4 (2)(a) lists the prohibited agreements which includes agreements *"fixing the purchase or selling price or imposing any other restrictive trading conditions with regard to the sale or distribution of any goods"*. (*Emphasis added*)

12. By engaging in negotiations with milk sellers' associations & milk retailers' association, the government itself becomes a party to a prohibited practice. Also, the

implementation and continuation of such agreements under the auspices of the Government promotes practices that are a violation of the Competition Act, 2010.

13. This Commission considers that the conduct of Price Control Committees/government's price control staff, i.e. entering into discussions and negotiations with associations over determination of prices actually encourages collusive behavior. An association, while representing an economic sector, milk in the present case, cannot negotiate selling price with Price Control Committees on behalf of its members/suppliers/sellers that are otherwise required to compete with each other. This practice of government functionaries encourages suppliers to share confidential information at the forum of their association that is anti-competitive as per law. Therefore, the Commission believes that the Government at any level must not provide any patronage to anticompetitive practices that may encourage collusive behaviour on the part of milk retailers, wholesalers, their associations or other market players. Prices fixing is detrimental to competition and against the consumer's interest.

Recommendations

14. In view of the foregoing observations and concerns, the Commission recommends that provincial and district governments issue strict guidelines directing that:

- a. Any members of associations, associations themselves or any stakeholders from the marketplace *must not* be invited to and must not participate in any formal or informal meeting in which the price of fresh milk is decided; and
- b. The price of fresh milk must be based on careful and *independent* analysis undertaken by respective government officers working as the members of the Price Review Committee.

Islamabad, the 12th of April, 2012